

J. ALFRED PULLIAM

JUNE 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. JONAS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2275]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2275) for the relief of J. Alfred Pulliam, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment is as follows:

Page 1, line 6, strike out "\$20,000", and insert "\$17,000".

The purpose of the proposed legislation is to pay the sum of \$17,000 to J. Alfred Pulliam of Waukegan, Ill., in full settlement of all claims against the United States for personal injuries, medical and hospital expenses, and loss of earnings sustained as a result of an accident involving a United States Army vehicle, on December 22, 1944, at Pearl Harbor, T. H.

STATEMENT OF FACTS

It appears that on December 22, 1944, at about 7:40 a. m., an Army 10-ton tractor-trailer, operated by an enlisted man on official business, was proceeding southeast on Kamehameha Highway, Territory of Hawaii, approaching the entrance to the subbase gate at Pearl Harbor. The Army driver states that he was traveling at a speed of 15 miles an hour, but the physical facts indicate that the speed of the Army vehicle was much greater. A Navy bus, operated by an enlisted man of the Navy on official business, was proceeding in the opposite direction on the same highway at a speed not in excess of 10 miles an hour. Kamehameha Highway consists of six lanes, and the Army vehicle was traveling in the middle southeast-bound lane, while the Navy bus was traveling in the inner northwest-bound lane. The Navy driver turned left to enter the subbase gate on the southwest side of the highway while the Army vehicle was about 200 or more feet away, and the bus was crossing the extreme southwest lane and was within

4 feet of having cleared the intersection when it was struck at the right front fender by the Army vehicle, which had skidded more than 50 feet up to the point of impact and which had swerved from the center southeast-bound lane to the outer lane. The Navy bus was extensively damaged and J. Alfred Pulliam, a civilian auditor employed in the Ships Service Department of the Navy, at Pearl Harbor, who was riding to work in the bus, sustained personal injuries. He was immediately taken to the United States Naval Hospital at Pearl Harbor where he remained under treatment until January 23, 1945.

The Department of the Army, in its report, gives full details of this accident, and the medical history of Mr. Pulliam, and recommends payment of the sum of \$16,000. However, your committee is of the opinion that the amount appropriated for his relief should be \$17,000.

The Department, in its report, states:

The evidence in this case fairly establishes that this accident and the resulting personal injury of J. Alfred Pulliam were not caused by any fault or negligence on his part or on the part of the driver of the Navy bus in which he was riding but were caused by the negligence of the driver of the Army tractor-trailer in operating his vehicle at an excessive speed under the circumstances then existing and in failing to maintain a proper lookout ahead of him and to yield the right-of-way to the Navy bus which had begun a left turn when the Army vehicle was still 200 feet or more away. The Department of the Army, therefore, believes that Mr. Pulliam should be compensated in a reasonable amount for the damages sustained by him as the result of his injury in this accident. The proposed award of \$20,000 stated in H. R. 5858 appears to be somewhat excessive. The major portion of Mr. Pulliam's claim is for an alleged loss of earnings based upon the salary of \$550 per month which he was receiving at the time of his injury. The claimant was then holding a wartime position, and it is not believed that the salary he was receiving at that time could be accepted as a fair average of the income he would ordinarily be expected to receive for an extended period. Upon consideration of all of the facts and circumstances of this case, it is the view of this Department that an award to the claimant in the amount of \$16,000 would constitute a fair and reasonable settlement of his claim.

Therefore, your committee recommends that the amount of \$20,000 be stricken and the sum of \$17,000 be inserted in lieu thereof, and recommends favorable consideration of the bill as amended.

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DEPARTMENT OF THE ARMY,  
Washington 25, D. C., August 15, 1950.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CELLER: The Department of the Army would have no objection to the enactment of H. R. 5858, Eighty-first Congress, a bill for the relief of J. Alfred Pulliam, if it should be amended as hereinafter recommended.

This bill would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, to J. Alfred Pulliam, of Waukegan, Illinois, the sum of \$20,000, in full settlement of all claims against the United States for personal injuries, medical and hospital expenses, and loss of earnings sustained as the result of an accident involving a United States Army vehicle, on December 22, 1944, at Pearl Harbor, Territory of Hawaii".

On December 22, 1944, at about 7:40 a. m., an Army 10-ton tractor-trailer, operated by an enlisted man on official business, was proceeding southeast on Kamehameha Highway, Territory of Hawaii, approaching the entrance to the subbase gate at Pearl Harbor. The Army driver states that he was traveling at a speed of 15 miles an hour, but the physical facts indicate that the speed of the Army vehicle was much greater. A Navy bus, operated by an enlisted man of the Navy on official business, was proceeding in the opposite direction on the same highway at a speed not in excess of 10 miles an hour. Kamehameha Highway consists of six lanes, and the Army vehicle was traveling in the middle southeast-

bound lane, while the Navy bus was traveling in the inner northwest-bound lane. The Navy driver turned left to enter the subbase gate on the southwest side of the highway while the Army vehicle was about 200 or more feet away, and the bus was crossing the extreme southwest lane and was within 4 feet of having cleared the intersection when it was struck at the right front fender by the Army vehicle, which had skidded more than 50 feet up to the point of impact and which had swerved from the center southeast-bound lane to the outer lane. The Navy bus was extensively damaged and J. Alfred Pulliam, a civilian auditor employed in the Ships Service Department of the Navy, at Pearl Harbor, who was riding to work in the bus, sustained personal injuries. He was immediately taken to the United States Naval Hospital at Pearl Harbor where he remained under treatment until January 23, 1945. A transcript of the records of said hospital in this case reads, in pertinent part, as follows:

"Diagnosis: DU (chest injuries)."

"Chief complaint: 'Pain in chest.'"

"Present illness: Patient was passenger in car wreck this morning about 0745 [7:45 a. m.]. He was brought to hospital immediately."

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"Physical examination: Temperature 99. Pulse 82. Respiration 24. Blood pressure 106/78. Patient is conscious, once well oriented. No signs of shock present. Pupils regular and react to light and accommodation. Laceration about 3 inches long on forehead. Stiffness and pain on motion of right shoulder, pain upon breathing in right chest. Tenderness over costosternal border (right). Crepitus palpable in right axilla upon respiration, also on auscultation. Voluntary splinting of right lung. Otherwise, essentially negative except for numerous abrasions over body."

"December 22, 1944: Subcutaneous emphysema right axilla. Pain over sixth and seventh ribs anteriorly on palpation. Fracture of ribs with lung injury. Chest strapped."

"December 26, 1944: Breath sounds still diminished, and almost absent, over right base. Percussion note is almost tympanitic. Seems to suggest a collapse."

"December 28, 1944: Left chest apparently normal to P & A. Right chest shows diminished breath sounds and tympanitic percussion note. No fluid demonstrated. Respiration is fairly rapid and heart and mediastrium appear shifted to left. This is probably pneumothorax of right lung."

"X-ray report.—Skull: No evidence of bone pathology seen. Right shoulders: There is no bony articular or periarticular changes seen. Rib cage: There is a fracture of the right fourth rib at about the midaxillary line, with complete separation and displacement of the fragments, and a fracture of the right sixth rib in the same area, with very little separation or displacement of the fragments. The right chest shows a marked compression of about 85 percent of the entire right lung from upward, downward. In the hilus there is a large calcified area approximately 4 by 2 centimeters. There is increased markings throughout the left chest showing compression of the lung on that side from the left."

"J. PENN,  
"Lieutenant Commander (MC) USNR."

"December 30, 1944: Patient allowed out of bed. No great amount of respiratory distress present."

"January 4, 1945: Chest strappings removed. Patient up in chair and feels much better."

"January 6, 1945: X-ray report.—There is a right-sided hydropneumo thorax, with a fluid level at the ninth rib at the posterior axillary line. There is air over the apex of the right lung, and above the diaphragm. The lung appears adherent to the lateral chest wall in the region of the previously described rib fractures. A calcification in the right hilum is interpreted as evidence of healed first infection tuberculosis. There is a little infiltration at the left apex, which is probably the result of adult-type tuberculosis, but there is no evidence of significant active pulmonary tuberculosis."

"P. R. WEEKS,  
"Commander (MC) USNR."

"Sputum report.—Unable to demonstrate the presence of acid fast bacilli in the specimen submitted."

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"January 21, 1945: Diagnosis changed."

"Change from DU (chest injuries), No. 2143 DNEPTE, to fracture, simple (fourth, sixth ribs, right), No. 2531 DNEPTE."

"Reason: Established not misconduct.

"January 23, 1945: Discharged to civilian life under care of his own doctor."

In a statement made in January 1950 Mr. Pulliam said:

"\* \* \* He [Mr. Pulliam] was confined to said [Navy] hospital from December 22, 1944, until January 25 [23], 1945, when he was released from said hospital and permitted to work 1 hour per day until April 15, 1945, when he was informed that he could resume his regular duties 'on a limited scale.'

"On April 15, 1945, due to the fact that affiant's condition was getting worse instead of better, affiant took emergency leave and went to Houston, Tex., where he consulted Dr. Duncan C. McKeever relative to his condition. Dr. McKeever gave him physiotherapy and X-ray treatments for about 6 weeks.

"On or about June 1, 1946, affiant was summoned to and did appear at Honolulu for the purpose of testifying on behalf of the United States Government relative to an investigation conducted by the Navy Department pertaining to certain transactions in the Ships Service Department at Pearl Harbor Submarine Base. The hearing was continued from time to time and affiant returned to Houston, Tex., on October 19, 1946, for further medical attention and surgery. On November 9, 1946, an arthrotomy of the right shoulder was performed on affiant by said Dr. McKeever and affiant continued under the care of said Dr. McKeever until about March 1, 1947, when affiant again went to Honolulu pursuant to summons to appear as a witness in said last-mentioned investigation and on April 10, 1947, this affiant returned to Houston, Tex., for further consultation with and treatment from said Dr. McKeever.

"Said Dr. McKeever has informed this affiant that he has received maximum benefit of treatment, stating that in the opinion of said Dr. McKeever, the condition of this affiant has become almost static and that said Dr. McKeever had advised this affiant that he, said Dr. McKeever, estimates the permanent disability of this affiant to be about 50 percent, based on marked limitation of motion and recurring pain on effort in the right shoulder."

On or about April 20, 1950, Mr. Pulliam was examined at the Ellington Air Force Base, Houston, Tex., and a report of such examination signed by Lt. (jg) Sam H. Gainer, MC, USNR, reads as follows:

"Additional information revealed Mr. Pulliam had the usual childhood diseases with no complications or sequelae. At age 5 he developed tuberculous osteomyelitis of left hip, which was treated by bed rest and incision and drainage. There was a retardation of normal epiphyseal growth in left hip [which] is evidenced by the left leg being 1½-2 inches shorter than the right.

"The patient was active in all high school and collegiate sports and activities with no injury to the left hip and leg.

"The routine physical examination was accomplished at this office April 20, 1950. Lungs were clear to percussion and auscultation. Other than the shortening of the left leg, the only positive findings were related to the right shoulder which showed the following positive findings:

"1. A 6-inch modified saber incision over head of right humerus.

"2. Prominence of head of right humerus, suggestive of anterior subluxation.

"3. With full arm extension unlimited internal rotation; painful external rotation beyond 30 degrees.

"4. Patient is unable to abduct right arm in lateral portion above shoulder or 90 degrees. Resistant counterpressure applied in above position demonstrates weakness of deltoid and produces pain.

"5. Unable to perform movements of external and internal rotation while in position of 90 degrees lateral abduction.

"6. Moderate atrophy of right deltoid, triceps, and biceps.

"7. Fifty percent disuse weakness of right hand.

"8. Normal biceps, triceps, and radial reflexes. Sensory sense intact.

"The patient has permanent, partial disability of right shoulder and arm which is accentuated by his profession as an auditor.

"It is felt by this examiner that expert orthopedic evaluation would be in order in this case. This examiner does not feel qualified nor have sufficient experience in cases of this nature to give correct impression of percentage of permanent disability."

Dr. Duncan C. McKeever, 826 Bankers Mortgage Building, Houston, Tex., has submitted the following record of operations performed by him on Mr. Pulliam's shoulder:

"November 9, 1946.—Operation: Repair of musculotendinous cuff of the right shoulder.

"Operative procedure: Under general anesthesia a modified saber cut incision was made. Dissection carried along the anterior border of the deltoid down



to the head of the humerus. Deltoid was retracted; capsule divided. It was found that the tuberosity was almost bare, this portion of the musculotendinous cuff originating in the supra and infraspinatus being attached along the top edge of the tuberosity instead of coming down over it. This was freed, the cuff was brought down and inserted with five stainless steel sutures into a small bony notch, cut to receive it, near the lower edge of the tuberosity. The incision then carefully closed in layers with interrupted stainless steel sutures. Patient returned to bed in good condition.

"February 11, 1947—Operation: Shoulder stretching.

"Operative procedure: Shoulder was stretched under pentathol anesthesia; adhesions were not particularly tight though numerous. The shoulder has a tendency to subluxate anteriorly and believe it must have been dislocated at the time of his original injury. Patient returned to bed and put in a position of external rotation and abduction."

On July 13, 1950, Dr. Murphy M. Sims, orthopedic surgeon, made the following statement concerning Mr. Pulliam's shoulder injury:

"Alfred J. [J. Alfred] Pulliam: This patient states that on December 22, 1944 at the Submarine Base, Pearl Harbor, T. H., he was struck by an Army truck while riding in a Government vehicle. He further states that he received injuries to his right shoulder, right lung, and right side of his head. The injuries to his lung and head are asymptomatic at present, but he is still having pain and limitation of motion of his right shoulder.

"Patient states he was operated on by a civilian orthopedic surgeon on November 9, 1946.

"Physical examination: There is moderate atrophy around the right shoulder girdle. Abduction by the deltoid to 15 degrees. Further abduction to 45 degrees with the aid of his scapular muscles. Forward flexion 45 degrees; extension 45 degrees; external rotation 0; internal 50 degrees. There is a scar between the deltoid and pectoralis major on the right.

"X-ray revealed several metallic wires in the region of the greater tuberosity on the right. Impression: The injury to this patient's shoulder was most probably a rupture of his supraspinatus tendon on the right. The operation was a repair of this tendon. There is no way of telling from this examination when this patient's original injury occurred."

J. Alfred Pulliam was 43 years of age at the time of this accident. He was an accountant employed as a civilian auditor (not civil service) by the Ship's Service Department of the Navy at a salary of \$550 a month. His wife, Mrs. Kathryn Pulliam, present age approximately 35 years, is wholly dependent upon him for her support, and is his only dependent.

Mr. Pulliam asserts that as a result of his injury in this accident he has incurred the following expenses:

7 months' total disability at \$550 a month.....	\$3, 850. 03	
36 months' partial disability at a loss of \$225 a month....	8, 100. 00	
Total estimated loss of wages.....		\$11, 950. 00
Hospital expenses.....	\$160. 00	
Physiotherapy.....	153. 00	
X-ray therapy.....	52. 00	
Surgeons fees.....	450. 00	
Anesthetics.....	50. 00	
Miscellaneous medicines and drugs.....	25. 00	
		890. 00
Unreimbursed portion of necessary travel—Expenditures for 2 round trips to Hawaii.....		1, 045. 12
(Mr. Pulliam states that he was required to appear twice to testify as a material Government witness at trials arising from his audits of naval books prior to this accident. His physical condition made it necessary for him to return to his physician for further surgery during these trials.)		
Unreimbursed hotel expenditures in transit.....		117. 75
Additional living expenses incurred in Houston, Tex., while undergoing treatment.....		315. 00
Total.....		14, 317. 87

On July 1, 1950, Mr. Pulliam submitted the following explanation of the item of \$1,045.12 claimed by him for "Unreimbursed portion of necessary travel":

"As to my trips to Hawaii, when I first came back in 1946 I was on sick leave without pay, and I agreed to return for the trials scheduled for the 1st of June 1946, which I did. When I arrived and the case was called it was set over until the 1st of September. I returned to Houston for further treatment. When I returned for the September call the cases were again postponed. I notified the United States attorney that I was returning to Houston for possible surgery and would only be available under regular subpoena should the cases ever be called. The latter part of January 1947 I was duly subpoenaed for around the 1st of February. As I was scheduled for further hospitalization I requested relief but the case was again postponed and subsequently set for March. It was on this trip and this trip alone was I reimbursed for my expenses. As for pay I received \$4 per day for expenses out of which I had to pay \$5 a day for a hotel room which even under modern-day economics is not practical to be classified as pay. For practical purposes I believe one could say that I received the regular witness fee."

With reference to his employment since his injury on December 22, 1944, Mr. Pulliam on July 1, 1950, made the following statement:

"I am at present employed as office manager for Duncan C. McKeever, M. D., at a salary of \$300 per month.

"The exact employment that I have had and the rate of pay that I have had since I was able to resume full-time employment is as follows: July 1, 1947, accountant with A. B. Lewis Co., Inc., Houston, at a salary of \$225 per month. As of October 1, I was raised to \$250 and as of January 1, 1948, I was raised to \$275. It was just impossible for me to continue doing that type of work although it is evident that my work was satisfactory from the rapid salary increases that I received. As a result I resigned as of March 15, 1948, and accepted my current position with Dr. McKeever at my present salary. This position does not require the use of accounting machines and the strained detail work of the other with the exception of around 4 or 5 hours a week, as it is practically all supervisory."

It appears that no compensation benefits or insurance have been paid or awarded to Mr. Pulliam on account of his injury in the accident of December 22, 1944, and no claim was ever filed by him with the United States Employees' Compensation Commission or the Bureau of Employees' Compensation for compensation benefits under the United States Employees' Compensation Act of September 7, 1916 (39 Stat. 742; 5 U. S. C. 751), as amended. It further appears that he is ineligible to receive compensation under the United States Employees' Compensation Act, as amended, for the reasons (1) that since he was not paid from appropriated funds he was not at the time of his injury a civil employee of the United States within the meaning and purview of said act, as amended, and (2) that he was not at such time engaged in the performance of his duty as an auditor for the Ships Service Department.

The post claims officer who investigated this case states that Mr. Pulliam's condition remains static at 50 percent permanent disability and that the prognosis is for no further improvement.

The evidence in this case fairly establishes that this accident and the resulting personal injury of J. Alfred Pulliam were not caused by any fault or negligence on his part or on the part of the driver of the Navy bus in which he was riding but were caused by the negligence of the driver of the Army tractor-trailer in operating his vehicle at an excessive speed under the circumstances then existing and in failing to maintain a proper lookout ahead of him and to yield the right-of-way to the Navy bus which had begun a left turn when the Army vehicle was still 200 feet or more away. The Department of the Army, therefore, believes that Mr. Pulliam should be compensated in a reasonable amount for the damages sustained by him as the result of his injury in this accident. The proposed award of \$20,000 stated in H. R. 5858 appears to be somewhat excessive. The major portion of Mr. Pulliam's claim is for an alleged loss of earnings based upon the salary of \$550 per month which he was receiving at the time of his injury. The claimant was then holding a wartime position, and it is not believed that the salary he was receiving at that time could be accepted as a fair average of the income he would ordinarily be expected to receive for an extended period. Upon consideration of all of the facts and circumstances of this case, it is the view of this Department that an award to the claimant in the amount of \$16,000 would constitute a fair and reasonable settlement of his claim.

This claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (Public Law 55, 81st Cong.), for the reason that the accident out of which his claim arises occurred prior to January 1, 1945.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,  
Secretary of the Army.

AFFIDAVIT

STATE OF TEXAS,  
County of Harris, ss:

J. Alfred Pulliam, being first duly sworn on oath, deposes and says that he is a resident of Illinois, now temporarily residing in the city of Houston, county of Harris, State of Texas, and that he is 47 years of age.

Affiant further deposes and says that he is by profession an auditor and accountant; that for a period of several years he was employed as a civilian auditor by the Ships Service Department of the United States Navy at Great Lakes, Ill.; that on or about, to wit, the 15th day of September A. D. 1944, he was transferred to the Submarine Base, Pearl Harbor, T. H., and entered upon his duties as an auditor at said base on or about, to wit, the 17th day of October A. D. 1944.

Affiant further deposes and says that during the time he was employed as auditor at said last-mentioned base he resided in the city of Honolulu, T. H., and that transportation between said base and Honolulu was furnished by bus operated by Ships Service Department of the United States Navy; that on December 22, 1944, this affiant was a passenger on such bus, together with other civilian employees, and then and there being transported from Honolulu to said base for the purpose of performing their regular respective duties; that on or about 7 a. m. of said last-mentioned date, the said bus arrived at the entrance to the submarine base with this affiant as passenger as aforesaid, and upon receiving and giving proper signal made a left turn to enter the said base. A United States Army truck No. W459882 (Studebaker), driven by Pvt. Roper Anderson, Serial No. 344-134-90, crashed into the Ships Service vehicle, causing great damage thereto and thereby causing severe injuries to this affiant. This affiant was at once taken to Navy 128 Hospital at Pearl Harbor, suffering from shock, broken ribs, crushed and punctured right lung, injured right shoulder and right arm, lacerations on the head and other parts of his body. He was confined to said hospital from December 22, 1944, until January 25, 1945, when he was released from said hospital and permitted to work 1 hour per day until April 15, 1945, when he was informed that he could resume his regular duties "on a limited scale."

On April 15, 1945, due to the fact that affiant's condition was getting worse instead of better, affiant took emergency leave and went to Houston, Tex., where he consulted Dr. Duncan C. McKeever relative to his condition. Dr. McKeever gave him physiotherapy and X-ray treatments for about 6 weeks.

On or about June 1, 1946, affiant was summoned to and did appear at Honolulu for the purpose of testifying on behalf of the United States Government relative to an investigation conducted by the Navy Department pertaining to certain transactions in the Ships Service Department at Pearl Harbor Submarine Base. The hearing was continued from time to time and affiant returned to Houston, Tex., on October 19, 1946, for further medical attention and surgery. On November 9, 1946, an arthrotomy of the right shoulder was performed on affiant by said Dr. McKeever and affiant continued under the care of said Dr. McKeever until about March 1, 1947, when affiant again went to Honolulu pursuant to summons to appear as a witness in said last mentioned investigation and on April 10, 1947, this affiant returned to Houston, Tex., for further consultation with and treatment from said Dr. McKeever.

Said Dr. McKeever has informed this affiant that he has received maximum benefit of treatment, stating that in the opinion of said Dr. McKeever, the condition of this affiant has become almost static and that said Dr. McKeever had advised this affiant that he, said Dr. McKeever, estimates the permanent disability of this affiant to be about 50 percent, based on marked limitation of motion and recurring pain on effort in the right shoulder.

Affiant further deposes and says that as a result of the injuries sustained as hereinabove described, he is unable to operate various types of accounting machines except for short periods of time and he has been able to resume only a part of such duties since July 18, 1947.

Affiant further deposes and says that his salary as auditor for Ships Service Department of the United States Navy was \$550 per month; that as a result of such injuries herein referred to and described he suffered a loss of 7 months'

service without compensation; that as a result of such injuries he has expended the following sums:

2 round trips to Hawaii	\$1, 045. 12
Hotel expenses incurred in transit	117. 75
Additional living expenses in Houston	315. 00
Hospital fees	160. 00
Physiotherapy treatments	153. 00
X-ray therapy	52. 00
Doctor's fees	450. 00
Anesthetic	50. 00
Miscellaneous medicines	25. 00

and that he has received no compensation or reimbursement whatsoever on account thereof; that he also makes claim for 50 percent disability of his right arm and shoulder, together with damages for pain and suffering; and that by reason of the matters and things hereinabove particularly set forth he claims \$20,000 in full settlement of all claims against the United States for personal injuries, medical and hospital expenses, pain and suffering, loss of earnings, and partial disability as a result of the matters and things hereinabove particularly set forth

Affiant further deposes and says that he makes this affidavit in support of H. R. 5858, Eighty-first Congress, 1st session, introduced August 2, 1949.

Further affiant saith not.

J. ALFRED PULLIAM.

Subscribed and sworn to before me this 27th day of January A. D. 1950.

[SEAL]

HUGH R. KELTON,  
Notary Public.

My commission expires June 1, 1951.

#### AFFIDAVIT

STATE OF TEXAS,  
County of Harris, ss:

Duncan C. McKeever, being first duly sworn, on oath deposes and says that he is a resident of the city of Houston, county of Harris, and State of Texas; that he is a duly licensed physician and surgeon now actively engaged in such practice specializing in orthopedic surgery in said city of Houston, with offices at 836 Bankers Mortgage Building in said city of Houston.

Affiant further deposes and says that he is now 44 years of age; that he graduated from the Medical School of the University of Kansas with the degree of M. D. in 1929; that he served two internships—one in the United States Navy at Brooklyn Naval Hospital and one at St. Luke's Hospital in Kansas City, Mo.; thereafter he spent 1 year as assistant pathologist at St. Luke's Hospital in Kansas City, Mo., and 6 years in postgraduate study of orthopedic surgery in said hospital with and under the direction of Dr. Frank D. Dixon.

Affiant further deposes and says that he moved to Houston, Tex., in July 1939 and engaged in the private practice of orthopedic surgery and continued in such practice until June 27, 1940, on which said last-mentioned date he was called into active service and entered the Medical Corps of the United States Navy and remained on such activity until his discharge therefrom on, to wit, the 18th day of September A. D. 1945.

Affiant further deposes and says that during the time of service in the United States Navy herein last above mentioned, he served as chief of orthopedic service at United States Naval Hospital at Long Beach, Calif., and as chief of orthopedic service at United States Naval Hospital, Navy No. 10, on the island of Oahu, T. H.; that upon being relieved of his duties on the island of Oahu he was transferred to the United States and was assigned to duty in surgical service at the United States Naval Hospital at Corpus Christi, Tex.; that he continued in such service until on, to wit, April 1, 1945; that on April 1, 1945, he was transferred to United States Naval Hospital at Bethesda, Md., from which he was discharged from active duty in the United States Navy Medical Corps and he thereupon returned to active private practice in orthopedic surgery in Houston, Tex., and has continued in such active practice from thence hitherto.

Affiant further deposes and says that for the past 20 years he has been actively engaged in the study and practice of surgery; that for the last 18 years such practice has been confined exclusively to orthopedic surgery, except for some general surgery while on active duty in the United States Navy during the times hereinabove mentioned.



Affiant further deposes and says that one J. Alfred Pulliam was under his care and observation from May 6, 1946, to the present time; that he first examined J. Alfred Pulliam on May 6, 1946; that the patient then complained of severe pain in the right side of his neck, right shoulder, and down his right arm; that such pain was so severe that he was unable to sleep or rest and unable to pursue his profession as an accountant. The following history was elicited from the patient:

"In December 1944 he was in a bus wreck in which he had a serious injury to the right side of the chest with some broken ribs and a hemopneumothorax. The ribs and lung condition gradually cleared up but he has continued to have pain in the right lower chest on deep breathing. He has suffered throughout and still has pain at the vertebral border of the right scapula, pain in the right shoulder and arm, marked weakness in the arm and inability to raise it. Gradually the arm became increasingly painful and the pain now extends up into the side of his neck and he is having some severe headaches. Diagnoses made at that time were: Pleural adhesions in the right chest, partial tear of supra and infraspinatus tendons in the right shoulder, scalenus anticus syndrome with cervical myalgic headache and subluxation of the right shoulder."

The patient was then placed on physiotherapy by affiant and given some X-ray therapy to the right shoulder to clear up some of the accessory muscle spasm and symptoms and facilitate accuracy of diagnosis. Treatment relieved the headaches and improved the arm and shoulder. The neck pain and headaches gradually disappeared completely but the patient continued to have a great deal of aching pain in the shoulder and was unable to use the shoulder at his work as he could not operate an accounting machine for more than 15 minutes without causing a severe ache in the shoulder which would last 2 or 3 days.

X-rays of the patient were taken by this affiant on October 29, 1946, preliminary to operative procedure, which said X-rays revealed some osteoporosis of the head of the right humerus. X-rays taken of the chest revealed some pleural adhesions in the right costophrenic sulcus.

On November 9, 1946, affiant performed an arthrotomy of the right shoulder. The musculotendinous cuff of the shoulder was found to be partially avulsed anteriorly. It was dissected free and reinserted into normal position from which it had been stripped at the time of his injury. Following this procedure a great deal of difficulty was encountered in remobilizing the right arm and on February 11, 1947, stretching of the shoulder under general anesthesia was necessary, which was done by this affiant. Physiotherapy treatments were continued throughout the above-described course and for some months thereafter under direction of this affiant.

Affiant further deposes and says that in his opinion the patient's shoulder now has become almost static and that therefore an estimate of his permanent disability can be made. This affiant estimates such permanent disability to be about 50 percent, based on the marked limitation of motion and recurring pain on effort in the right shoulder. This range of motion is: external rotation, absent—adduction, 45°; internal rotation, slightly limited—adduction, normal. These conditions markedly interfere with the patient's occupation as an accountant since this occupation necessitates the operation of various types of accounting machines and the arm is not strong enough for him to work more than a few hours without becoming severely fatigued and with resulting severe aching in the arm. Any unusual strain on the arm causes sharp pain and muscle spasm which persists for several days.

Mr. Pulliam has been released from further treatment as having received maximum benefit of treatment. He has been able to perform only part of his duties since the 18th of July 1947.

Affiant further states that said patient is still unable to use any form of computation machine for more than a few minutes at a time, which seriously interferes with his occupation or profession as an accountant and materially limits the type of employment he can obtain and the compensation received therefrom.

Affiant further deposes and says that his reasonable charge for professional services rendered to said J. Alfred Pulliam were \$450.

Affiant further deposes and says that he is a member of the staffs of Memorial Hospital, Houston, Tex.; St. Joseph's Hospital, Houston, Tex., and is chief of staff of Texas Elks' Crippled Children's Hospital, Ottine, Tex.

Further affiant saith not.

DUNCAN C. McKEEVER.

Subscribed and sworn to before me this 27th day of January A. D. 1950.

[SEAL]

HUGH R. KELTON, Notary Public.

My commission expires June 1, 1951.



